

ASSEMBLY BILL

No. 1505

Introduced by Assembly Member La Suer

February 22, 2005

An act to amend Sections 2085.5, 3000, and 6231 of the Penal Code, relating to restitution.

LEGISLATIVE COUNSEL'S DIGEST

AB 1505, as introduced, La Suer. Victim restitution.

Existing law prohibits deductions from being made from an inmate's wages and trust account for a restitution order if the victim has not filed an application with the Victim Compensation Program.

This bill would not require a victim to file an application with the Victim Compensation Program in order to receive money from the program.

Under existing law, the Director of Corrections may collect money for a restitution fine or order from a parolee.

This bill would require the director to do so.

Existing law authorizes the Department of Corrections of the Board of Prison Terms to impose as a condition of parole that a prisoner make payments on any outstanding restitution fines or orders.

This bill would require that condition of parole.

Under existing law, one-third of the wages earned by a prisoner housed in a restitution center is used to pay restitution, as specified. Once all required restitution is paid, that one-third is required to be paid to the local jurisdiction for crime prevention.

This bill would instead require that one-third of wages to be paid to local victim witness assistance centers, once all restitution is paid.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 2085.5 of the Penal Code is amended to read:

2085.5. (a) In any case in which a prisoner owes a restitution fine imposed pursuant to subdivision (a) of Section 13967 of the Government Code, as operative prior to September 28, 1994, subdivision (b) of Section 730.6 of the Welfare and Institutions Code, or subdivision (b) of Section 1202.4, the Director of Corrections shall deduct a minimum of 20 percent or the balance owing on the fine amount, whichever is less, up to a maximum of 50 percent from the wages and trust account deposits of a prisoner, unless prohibited by federal law, and shall transfer that amount to the California Victim Compensation and Government Claims Board for deposit in the Restitution Fund in the State Treasury. Any amount so deducted shall be credited against the amount owing on the fine. The sentencing court shall be provided a record of the payments.

(b) In any case in which a prisoner owes a restitution order imposed pursuant to subdivision (c) of Section 13967 of the Government Code, as operative prior to September 28, 1994, subdivision (h) of Section 730.6 of the Welfare and Institutions Code, or subdivision (f) of Section 1202.4, the Director of Corrections shall deduct a minimum of 20 percent or the balance owing on the order amount, whichever is less, up to a maximum of 50 percent from the wages and trust account deposits of a prisoner, unless prohibited by federal law. ~~If the restitution is owed to a person who has filed an application with the Victim Compensation Program, the~~ The director shall transfer that amount to the California Victim Compensation and Government Claims Board for direct payment to the victim, or payment shall be made to the Restitution Fund to the extent that the victim has received assistance pursuant to that program. ~~No deductions shall be made on behalf of victims who have not filed an application with the Victim Compensation Program.~~ The sentencing court shall be provided a record of the payments made to victims and of the payments deposited to the Restitution Fund pursuant to this subdivision.

(c) The director shall deduct and retain from the wages and trust account deposits of a prisoner, unless prohibited by federal

law, an administrative fee that totals 10 percent of any amount transferred to the California Victim Compensation and Government Claims Board pursuant to subdivision (a) or (b). The director shall deduct and retain from any prisoner settlement or trial award, an administrative fee that totals 5 percent of any amount paid from the settlement or award to satisfy an outstanding restitution order or fine pursuant to subdivision (j), unless prohibited by federal law. The director shall deposit the administrative fee moneys in a special deposit account for reimbursing administrative and support costs of the restitution program of the Department of Corrections. The director, at his or her discretion, may retain any excess funds in the special deposit account for future reimbursement of the department's administrative and support costs for the restitution program or may transfer all or part of the excess funds for deposit in the Restitution Fund.

(d) In any case in which a parolee owes a restitution fine imposed pursuant to subdivision (a) of Section 13967 of the Government Code, as operative prior to September 28, 1994, subdivision (b) of Section 730.6 of the Welfare and Institutions Code, or subdivision (b) of Section 1202.4, the Director of Corrections ~~may~~ *shall* collect from the parolee any moneys owing on the restitution fine amount, unless prohibited by federal law. The director shall transfer that amount to the California Victim Compensation and Government Claims Board for deposit in the Restitution Fund in the State Treasury. Any amount so deducted shall be credited against the amount owing on the fine. The sentencing court shall be provided a record of the payments.

(e) In any case in which a parolee owes a direct order of restitution, imposed pursuant to subdivision (c) of Section 13967 of the Government Code, as operative prior to September 28, 1994, subdivision (h) of Section 730.6 of the Welfare and Institutions Code, or paragraph (3) of subdivision (a) of Section 1202.4, the Director of Corrections ~~may~~ *shall* collect from the parolee any moneys owing, unless prohibited by federal law. ~~If the restitution is owed to a person who has filed an application with the Victim Compensation Program, the~~ *The* director shall transfer that amount to the California Victim Compensation and Government Claims Board for direct payment to the victim, or payment shall be made to the Restitution Fund to the extent that

1 the victim has received assistance pursuant to that program. ~~No~~
2 ~~deductions shall be made on behalf of victims who have not filed~~
3 ~~an application with the Victim Compensation Program.~~ The
4 sentencing court shall be provided a record of the payments made
5 by the offender pursuant to this subdivision.

6 (f) The director may deduct and retain from any moneys
7 collected from parolees an administrative fee that totals 10
8 percent of any amount transferred to the California Victim
9 Compensation and Government Claims Board pursuant to
10 subdivision (d) or (e), unless prohibited by federal law. The
11 director shall deduct and retain from any settlement or trial award
12 of a parolee an administrative fee that totals 5 percent of any
13 amount paid from the settlement or award to satisfy an
14 outstanding restitution order or fine pursuant to subdivision (j),
15 unless prohibited by federal law. The director shall deposit the
16 administrative fee moneys in a special deposit account for
17 reimbursing administrative and support costs of the restitution
18 program of the Department of Corrections. The director, at his or
19 her discretion, may retain any excess funds in the special deposit
20 account for future reimbursement of the department's
21 administrative and support costs for the restitution program or
22 may transfer all or part of the excess funds for deposit in the
23 Restitution Fund.

24 (g) When a prisoner *or parolee* has both a restitution fine and
25 a restitution order from the sentencing court, the Department of
26 Corrections shall collect the restitution order first pursuant to
27 subdivision (b) *or (e)*.

28 (h) ~~When a parolee has both a restitution fine and order from~~
29 ~~the sentencing court, the Department of Corrections may collect~~
30 ~~the restitution order first, pursuant to subdivision (e).~~

31 (i) If an inmate is housed at an institution that requires food to
32 be purchased from the institution canteen for unsupervised
33 overnight visits, and if the money for the purchase of this food is
34 received from funds other than the inmate's wages, that money
35 shall be exempt from restitution deductions. This exemption shall
36 apply to the actual amount spent on food for the visit up to a
37 maximum of fifty dollars (\$50) for visits that include the inmate
38 and one visitor, seventy dollars (\$70) for visits that include the
39 inmate and two or three visitors, and eighty dollars (\$80) for
40 visits that include the inmate and four or more visitors.

1 ~~(j)~~

2 (i) Any compensatory or punitive damages awarded by trial or
3 settlement to any inmate or parolee in connection with a civil
4 action brought against any federal, state, or local jail, prison, or
5 correctional facility, or any official or agent thereof, shall be paid
6 directly, after payment of reasonable attorney's fees and
7 litigation costs approved by the court, to satisfy any outstanding
8 restitution orders or restitution fines against that person. The
9 balance of any award shall be forwarded to the payee after full
10 payment of all outstanding restitution orders and restitution fines,
11 subject to subdivisions (c) and (f). The Department of
12 Corrections shall make all reasonable efforts to notify the victims
13 of the crime for which that person was convicted concerning the
14 pending payment of any compensatory or punitive damages.

15 ~~(k)~~

16 (j) (1) Amounts transferred to the California Victim
17 Compensation and Government Claims Board for payment of
18 direct orders of restitution shall be paid to the victim within 60
19 days from the date the restitution revenues are received by the
20 California Victim Compensation and Government Claims Board.
21 If the restitution payment to a victim is less than fifty dollars
22 (\$50), then payment need not be forwarded to that victim until
23 the payment reaches fifty dollars (\$50) or until 180 days from the
24 date the first payment is received, whichever occurs sooner.

25 (2) In any case in which a victim cannot be located, the
26 restitution revenues received by the California Victim
27 Compensation and Government Claims Board on behalf of the
28 victim shall be held in trust in the Restitution Fund until the end
29 of the state fiscal year subsequent to the state fiscal year in which
30 the funds were deposited or until the time that the victim has
31 provided current address information, whichever occurs sooner.
32 Amounts remaining in trust at the end of the specified period of
33 time shall revert to the Restitution Fund.

34 (3) Any victim failing to provide a current address within the
35 period of time specified in paragraph (2) may provide
36 documentation to the Department of Corrections, which in turn
37 shall verify that moneys were in fact collected on behalf of the
38 victim. Upon receipt of that verified information from the
39 Department of Corrections, the California Victim Compensation
40 and Government Claims Board shall transmit the restitution

1 revenues to the victim in accordance with the provisions of
2 subdivision (b) *or* (e).

3 SEC. 2. Section 3000 of the Penal Code is amended to read:

4 3000. (a) (1) The Legislature finds and declares that the
5 period immediately following incarceration is critical to
6 successful reintegration of the offender into society and to
7 positive citizenship. It is in the interest of public safety for the
8 state to provide for the supervision of and surveillance of
9 parolees, including the judicious use of revocation actions, and to
10 provide educational, vocational, family and personal counseling
11 necessary to assist parolees in the transition between
12 imprisonment and discharge. A sentence pursuant to Section
13 1168 or 1170 shall include a period of parole, unless waived, as
14 provided in this section.

15 (2) The Legislature finds and declares that it is not the intent
16 of this section to diminish resources allocated to the Department
17 of Corrections for parole functions for which the department is
18 responsible. It is also not the intent of this section to diminish the
19 resources allocated to the Board of Prison Terms to execute its
20 duties with respect to parole functions for which the board is
21 responsible.

22 (3) The Legislature finds and declares that diligent effort must
23 be made to ensure that parolees are held accountable for their
24 criminal behavior, including, but not limited to, the satisfaction
25 of restitution fines and orders.

26 (4) Any finding made pursuant to Article 4 (commencing
27 with Section 6600) of Chapter 2 of Part 2 of Division 6 of the
28 Welfare and Institutions Code, that a person is a sexually violent
29 predator shall not toll, discharge, or otherwise affect that person's
30 period of parole.

31 (b) Notwithstanding any provision to the contrary in Article 3
32 (commencing with Section 3040) of this chapter, the following
33 shall apply:

34 (1) At the expiration of a term of imprisonment of one year
35 and one day, or a term of imprisonment imposed pursuant to
36 Section 1170 or at the expiration of a term reduced pursuant to
37 Section 2931 or 2933, if applicable, the inmate shall be released
38 on parole for a period not exceeding three years, except that any
39 inmate sentenced for an offense specified in paragraph (3), (4),
40 (5), (6), (11), (16), or (18) of subdivision (c) of Section 667.5

1 shall be released on parole for a period not exceeding five years,
2 unless in either case the parole authority for good cause waives
3 parole and discharges the inmate from the custody of the
4 department.

5 (2) In the case of any inmate sentenced under Section 1168,
6 the period of parole shall not exceed five years in the case of an
7 inmate imprisoned for any offense other than first or second
8 degree murder for which the inmate has received a life sentence,
9 and shall not exceed three years in the case of any other inmate,
10 unless in either case the parole authority for good cause waives
11 parole and discharges the inmate from custody of the department.
12 This subdivision shall also be applicable to inmates who
13 committed crimes prior to July 1, 1977, to the extent specified in
14 Section 1170.2.

15 (3) Notwithstanding paragraphs (1) and (2), in the case of any
16 offense for which the inmate has received a life sentence
17 pursuant to Section 667.61 or 667.71, the period of parole shall
18 be five years. Upon the request of the Department of Corrections,
19 and on the grounds that the paroled inmate may pose a
20 substantial danger to public safety, the Board of Prison Terms
21 shall conduct a hearing to determine if the parolee shall be
22 subject to a single additional five-year period of parole. The
23 board shall conduct the hearing pursuant to the procedures and
24 standards governing parole revocation. The request for parole
25 extension shall be made no less than 180 days prior to the
26 expiration of the initial five-year period of parole.

27 (4) The parole authority shall consider the request of any
28 inmate regarding the length of his or her parole and the
29 conditions thereof.

30 (5) Upon successful completion of parole, or at the end of the
31 maximum statutory period of parole specified for the inmate
32 under paragraph (1), (2), or (3), as the case may be, whichever is
33 earlier, the inmate shall be discharged from custody. The date of
34 the maximum statutory period of parole under this subdivision
35 and paragraphs (1), (2), and (3) shall be computed from the date
36 of initial parole or from the date of extension of parole pursuant
37 to paragraph (3) and shall be a period chronologically
38 determined. Time during which parole is suspended because the
39 prisoner has absconded or has been returned to custody as a
40 parole violator shall not be credited toward any period of parole

1 unless the prisoner is found not guilty of the parole violation.
2 However, in no case, except as provided in Section 3064, may a
3 prisoner subject to three years on parole be retained under parole
4 supervision or in custody for a period longer than four years from
5 the date of his or her initial parole, and, except as provided in
6 Section 3064, in no case may a prisoner subject to five years on
7 parole be retained under parole supervision or in custody for a
8 period longer than seven years from the date of his or her initial
9 parole or from the date of extension of parole pursuant to
10 paragraph (3).

11 (6) The Department of Corrections shall meet with each
12 inmate at least 30 days prior to his or her good time release date
13 and shall provide, under guidelines specified by the parole
14 authority, the conditions of parole and the length of parole up to
15 the maximum period of time provided by law. The inmate has the
16 right to reconsideration of the length of parole and conditions
17 thereof by the parole authority. The Department of Corrections or
18 the Board of Prison Terms ~~may~~ *shall* impose as a condition of
19 parole that a prisoner make payments on the prisoner's
20 outstanding restitution fines or orders imposed pursuant to
21 subdivision (a) or (c) of Section 13967 of the Government Code,
22 as operative prior to September 28, 1994, or subdivision (b) or (f)
23 of Section 1202.4.

24 (7) For purposes of this chapter, the Board of Prison Terms
25 shall be considered the parole authority.

26 (8) The sole authority to issue warrants for the return to actual
27 custody of any state prisoner released on parole rests with the
28 Board of Prison Terms, except for any escaped state prisoner or
29 any state prisoner released prior to his or her scheduled release
30 date who should be returned to custody, and Section 3060 shall
31 apply.

32 (9) It is the intent of the Legislature that efforts be made with
33 respect to persons who are subject to subparagraph (C) of
34 paragraph (1) of subdivision (a) of Section 290 who are on parole
35 to engage them in treatment.

36 SEC. 3. Section 6231 of the Penal Code is amended to read:

37 6231. (a) Wages earned by an offender, less any deductions
38 for taxes, shall be paid directly to the Department of Corrections.

39 (b) Wage moneys received by the department shall be used to
40 reimburse the offender for costs directly associated with

1 continued employment, including transportation, special tools or
2 clothing, meals away from the center, union dues, and other
3 employee-mandated costs. The remaining wages shall be
4 distributed as follows:

5 (1) One-third shall be transferred to the Department of
6 Corrections to pay the costs of operating and maintaining the
7 restitution center.

8 (2) One-third shall be used to pay restitution pursuant to the
9 agreement or court order. After the restitution is paid these
10 moneys shall be paid to the jurisdiction which prosecuted the
11 offender to defray the court costs and attorney fees incurred in
12 the offender's prosecution. If all restitution, court costs and
13 attorney fees are paid, these moneys shall be paid to the local
14 ~~jurisdiction for crime prevention~~ *victim witness assistance center,*
15 *established pursuant to Article 2 (commencing with Section*
16 *13835) of Chapter 4 of Title 6 of Part 4.*

17 (3) One-third shall be placed in a savings account for the
18 offender, to provide support for the offender's immediate family,
19 to purchase items necessary for the offender's employment or to
20 give to the offender to purchase personal accessories. Any
21 moneys in the savings account or not expended pursuant to this
22 paragraph at the time the offender is released from the restitution
23 center shall be paid to the offender.